



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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Hon. Garry L. Edmondson
Kenton County Attorney
Kenton County Administrative Building
303 Court Street, Room 307
Covington, Kentucky 41011

Re: Commissioner Michelle Williams

Dear Garry:

You have requested that this office review the qualification of Michelle Williams for Covington City Commissioner under KRS 415.050 in light of her conviction history. After having thoroughly reviewed her conviction history, we do not find that she has been convicted of a felony, and the legislature has not prescribed what constitutes a high misdemeanor. Accordingly, we find that Commissioner Williams is qualified to hold office under KY. CONST. § 150 on the facts presented to us.

Michelle Williams was elected to serve as Covington City Commissioner in 2012. Our research confirms your analysis of her criminal history, which does not include any felony convictions. At issue is whether these convictions disqualify her from office under KY. CONST. § 150.

KY. CONST. § 150 provides in relevant part that "all persons shall be excluded from office who have been, or shall hereafter be, convicted of a felony, or of such high misdemeanor as may be prescribed by law." Commissioner Williams must thus be excluded from office if she has committed a felony or a high misdemeanor as prescribed by law. Since Commissioner Williams has not been convicted of a felony, the issue is whether she has been convicted of a high misdemeanor as prescribed by law.

In OAG 81-45, we advised that there was no statutory definition of "high misdemeanor." Citing the DEBATES CONSTITUTIONAL CONVENTION (1890), we found that it was the intent of the drafters of the Constitution that what constituted a "high misdemeanor" would be left to the legislature to provide. The legislature had not defined "high misdemeanor" for the purposes of KY. CONST. § 150 at that time, and has



not done so at present. Only two statutes in the Kentucky Revised Statutes specify crimes that are considered high misdemeanors, and both involve obstructing state audits. KRS 43.990; KRS 156.295. As Commissioner Williams has not been convicted of obstructing state audits, we cannot find that she has committed a high misdemeanor under KY. CONST. § 150.

You suggest that "high misdemeanor" should be interpreted in terms of the definition of "moral turpitude," but without any citations in support of that point. The only Kentucky authority we are able to find supporting this contention is *Anderson v. Winfree*, 4 S.W. 351 (Ky. 1887). *Anderson* discusses high misdemeanors in the context of the predecessor to KY. CONST. § 150, and crimes of moral turpitude in legislative action undertaken in the context of that constitutional provision. *Id.* at 353. While *Anderson* treats high misdemeanors and crimes of moral turpitude as distinct but related, *Anderson* obviously predates the 1891 Constitution, and the intent of the drafters of the 1891 Constitution, as explained in OAG 81-45, should prevail.

You cite several cases as examples of crimes involving moral turpitude: *In Re Shumate*, 382 S.W.2d 405 (Ky. 1964), *In re Rothrock*, 406 S.W.2d 840 (Ky. 1966), *In re Carroll*, 406 S.W.2d 845 (Ky. 1966), *Kentucky State Bar Ass'n. v. Scott*, 409 S.W.2d 293 (Ky. 1966), and *Kentucky State Bar Ass'n. v. Howard*, 437 S.W.2d 171 (Ky. 1969). All of these cases involve attorney discipline under RCA 3.335. As Commissioner Williams is not an attorney, and RCA 3.335 has been replaced with SCR 3.130(8.4), which abandons reliance on the concept of moral turpitude, SCR 3.130(8.4) cmt. 2, we find these cases instructive in the concept of moral turpitude but not directly on point.

Only the Attorney General or a person who claims the office has the authority to initiate an action in the circuit court to oust a usurper from membership on the City Commission. See KRS 415.050, KRS 415.070, *Hermann v. Morlidge, et al.*, 298 Ky. 632, 183 S.W. 2d 807, 809 (1944) and *Choate v. Ferguson*, 347 S.W.2d 81 (1961). The City Commission, on the other hand, is limited to removing members for "misconduct, incapacity, or willful neglect in the performance of the duties of his office." See KRS 83A.040(9). The City Commission may act pursuant to such authority if it finds misconduct, incapacity, or willful neglect, but this authority only applies to conduct related to the performance of the duties of her office.

In summary, despite Commissioner Williams' misdemeanor convictions, we are without constitutional authority to oust her as City Commissioner based on those convictions.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'Ryan', with a long horizontal stroke extending to the right.

Ryan Halloran
Assistant Attorney General